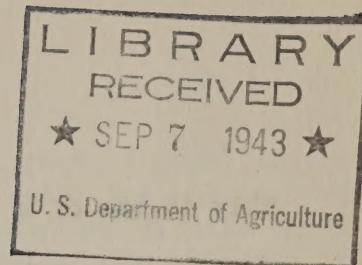


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ALABAMA STATE MILK CONTROL ACT

PAPER NO. 2. Series on State Milk Control Acts, Dairy Section,
Agricultural Adjustment Administration, United States Department
of Agriculture.

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Introduction

This is one of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general, the legal developments in connection with their administration and enforcement. One paper will be devoted to each State having such an act.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN ALABAMA
THE ACT, ITS ADMINISTRATION, AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

The Milk Control Act (No. 163, General Laws of 1935), approved July 9, 1935, is an emergency measure enacted under the police power of the State, declaring that the production and handling of milk is an industry affecting the public health and interest. The presence of unfair and demoralizing practices is recognized as a menace to the public welfare, and disparity between the prices received for milk and the prices paid by the producers affects the credit structure of the State and creates an emergency which was the subject of Federal legislation and which, in Alabama, made immediate regulation imperative. A collateral objective is to stabilize marketing conditions through the organization of producer cooperative associations. The emergency period, during which the act shall apply, ends June 30, 1939.

Type of Governing Agency

A Milk Control Board is created consisting of five members, to be appointed and removed by the Governor, as follows: A "wholesale producer", a "producer distributor", a "distributor", a "consumer", and a "member" who shall not be engaged in the production, distribution, or sale of milk in any form.

Local committees or other governing bodies are not expressly provided for, although application of the act to designated marketing areas within the State contemplates the presence of organized producer and distributor groups and in six of the eight orders applicable to milk sheds, local advisory committees have been created.

Conditions Under Which Powers of Board May Be Exercised

The board may not exercise any of its powers relative to licensing or fixing of prices until it has designated "milk-sheds" as "natural marketing areas" within the State and has been petitioned in writing "by a majority of producers and distributors, both groups counted as one group, selling or marketing milk" in such an area and operating "under a permit from the State Board of Health or any County Board of Health." The board is not required to vacate its jurisdiction after it has once been established.

Source of Financing

The board's activities are financed by yearly fees paid to the board by producers, producer-distributors, stores, distributors, and processors. The fees are as follows: \$2.50 for each store operated; in the case of a producer with six or more cows, fifty cents per cow, dry or milking, over two years old (no license fee on five cows or less); in the case of a producer-distributor, "a license fee as a producer on the amount he produces and as a distributor on the amount he buys"; in the case of a distributor, also in the case of a processor, an amount graduated according to the volume of milk handled and ranging from \$10 to \$250. The board is authorized to borrow money and pledge license fees for payment. All money received by the board shall be paid into the State treasury and shall become a special fund from which the money shall be paid out upon vouchers drawn by the board.

Protective provisions. - Preservation of the act against invalidation is sought by the usual separability clause, and a declaration that the act shall not be construed to apply to foreign or interstate commerce, except as may be permitted pursuant to Federal laws and the Federal Constitution.

II. Regulatory Provisions.

Powers of the Board Other Than Price-Fixing

Investigation, records, and reports. - The powers of supervision and control vested in the board extend to the production, production-distribution, transportation, manufacture, storage, distribution, delivery, processing, and sale of milk^{1/} in the State. These powers are supported by the right of access, at all reasonable hours, to books, papers, and other relevant documents, together with the power to subpoena persons and records and administer oaths in connection therewith. Powers of investigation extend to both milk and milk products.

The board may require licensees to keep detailed records, as specified in the act, and submit verified reports or information of which record is required to be kept, and other information deemed necessary in the administration of the act. Such information is required to be kept confidential for the exclusive use of the board or presentation in court, subject to penalty for unlawfully revealing the same.

1/ By definition, "milk" means milk of dairy animals prepared "with a view to being sold as milk, and also cream, buttermilk and skimmed milk, sold or intended to be sold as such for human food", and the "said term" excludes milk sold for any other purpose.

Licensing Powers. - In any milkshed "where the provisions of the Act once apply" it is mandatory that each producer, producer-distributor, store, and distributor shall apply to the board for a license to operate. Application for license shall be in writing under oath, stating facts concerning the applicant's "circumstances and the nature of the business to be conducted." The license fee required to be paid shall accompany the application, also "a certificate from the State or County Board of Health in the milkshed where he (the applicant) desires to do business that he has and is complying with the health regulations of such milkshed." In the case of the distributor, a surety bond shall also be filed with the application.

A milk dealer, distributor, or producer, who was not in business at the time the act became effective, may not be granted a license,^{2/} nor may any extension of an existing business be made except with the approval of the board. Such approval is subject to the condition that the applicant be qualified "by character, general fitness, experience, financial responsibility and equipment to properly conduct the proposed business", that the extension will not tend to demoralize a market already adequately served, and that the public interest will be promoted.

Revocation or refusal to grant a license may be conditioned upon any of several specifically enumerated conditions, some of which are in the nature of financial responsibility, fair trade practices, fraud, or violation of the act.

Bonding of distributors. - Each milk distributor buying milk from producers for resale or manufacture shall execute and file a surety company bond of not less than \$2,000, or, under specified circumstances, deposit acceptable collateral. After subsequent investigation and review, the bond may be increased to not more than double the maximum value of milk purchased in any one month, and in no event shall it be in excess of \$10,000.

Cooperation with other authorities. - The board is authorized to cooperate with the legally constituted authorities of other States and the United States in the effectuation of the purpose of the Agricultural Adjustment Act and the State Milk Control Act, and may conduct joint hearings and issue joint or concurrent orders pursuant thereto.

Mediation and arbitration. - The board is vested with the duty, upon application of any affected person, to act as mediator and arbitrator in any controversy or issue that may arise among producers or between them and milk dealers, either individually or collectively, and its decision is declared by the statute to be conclusive and binding on the parties involved.

2/ This statutory provision was declared invalid by the Circuit Court of Montgomery County. For further discussion of court decisions, see PART THREE.

Provisions in Regard to Price Regulation

Prices to be paid producers. - After investigation and public hearing, the board may fix minimum prices to be paid to producers applicable to various grades and uses of milk, as determined by the board, and to the particular locality or zone in which the milk is produced, and varying in accordance with conditions in different zones or markets. In fixing such prices, consideration is required to be given to (1) all reasonable costs of production, hauling, processing, and other services performed, (2) the balance between production and consumption, and (3) the purchasing power of the public. Prices also shall be such as will best protect the milk industry and insure a sufficient quantity of milk. A lesser price than that fixed for milk for fluid consumption may be fixed for milk which is produced in excess of what is needed for fluid consumption, in any area where a plan of base rating shall have been established.

Differentials, transportation charges, etc. - the power to fix prices according to various uses and under different conditions provides ample authority to include necessary differentials in the price schedules. All prices to producers are subject to the exception that, where milk produced by them is sold to a dealer for shipment into or sale in another State where producer prices are regulated by the State, the price paid shall be the price in effect in the State of destination for milk for similar purposes and purchased under similar conditions, with proper allowances for transportation.

Method of payment to producers; base rating. - The act contains no provisions relative to pooling of proceeds among producers throughout an entire market. Privileges reserved to cooperative associations include the blending of all proceeds among their members or producers selling through the association.

For the purpose of securing a proper balance between supply and demand, the board may establish producer quotas within which a designated price shall be paid, and a lesser price applicable to production in excess of such quotas. Information necessary for the allotment of such quotas may be required of dealers.

Resale prices. - The board may fix minimum or maximum wholesale or retail prices to be charged (1) for milk handled within the milkshed for fluid consumption; (2) by milk dealers to stores either for consumption on the premises or resale to consumers; (3) by stores to consumers except for consumption on the premises where sold; and (4) by milk dealers to other milk dealers. The board's power to fix resale prices extends to the producer-distributor, who is included under the definition of "Milk Dealer." The act does not differentiate between cash-and-carry and delivery prices.

In addition to considering the costs of distribution and the purchasing power of the public, the board, in fixing minimum wholesale or retail prices, shall not permit them to be higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment. In addition, the board may determine the amount of handling or processing charges to be included in the price applicable to inter-dealer transactions.

Powers With Respect to Unfair Competition, Trade Practices, etc.

Although the presence of unfair and destructive trade practices is declared to be a menace to public welfare and one cause of the enactment of the Milk Control Law, no provision defines and prohibits practices labeled as unfair. However, certain of the stipulated bases upon which licenses may be revoked are of the nature of unfair trade practices, such as the rejection of milk without reasonable cause or advance notice, failure to make payment without reasonable cause, being a party to a combination to fix prices contrary to law, and others of a similar character.

Limitations and Exceptions

In addition to the limitation that the act may not be made applicable to any marketing area except in response to a petition as required by law, the act provides that it shall not be construed to conflict with or alter any laws in force relating to the various boards or departments of health of any county or municipality of the State, nor any of the sanitary codes in force in such areas. Further limitations are that the act shall not apply to a producer supplying milk only to processors who buy milk solely for processing purposes and who do not sell or dispose of the same as raw or pasteurized milk, and that the act shall not apply to canned milk.

Violation

Unlawful acts. - In any area where the provisions of the act are in effect, handling milk in any way without a license, and handling or distributing milk which is known to have been handled in violation of the act are unlawful. Complementary to other State laws it is declared that, except where the board otherwise determines, it is unlawful for a dealer to pay producers a price lower than that required to be paid for milk purchased from producers under similar conditions and for similar purposes and with proper allowance for transportation in the State in which the milk is to be sold. Likewise, after the board shall have determined the maximum and minimum prices and handling charges, it is unlawful to sell or purchase milk for less or more than the price applicable to the particular transaction, by whatsoever device or method the variation in price may be achieved.

Penalties. - Violation of the act or any lawful rule, regulation, or order of the board is declared a misdemeanor and punishable on conviction by fine.

Legal Remedies

Board. - The act provides that the board may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of the act or any rule or order of the board. In addition, to all other remedies under the act, the board may apply for relief by injunction, if necessary to protect the public interest, without being compelled to allege or prove that an adequate remedy at law does not exist, and need not give or post bond in any action to which it is a party, whether upon appeal or otherwise.

Aggrieved parties. - Any aggrieved person affected by any order or action of the board ~~may~~ within ten days after receiving notice of any such action or order, have such order, or action reviewed by a Writ of Certiorari by filing in the Circuit Court of the County wherein said action or order was taken or made, a verified petition . . ." The court shall consider only such matters as are contained in the petition. The writ shall require the board to file with the court the records upon which such action or order of the board was made and to file answer to said petition within thirty days after service of the writ. Upon filing such answer, issue shall be joined thereon without further pleading and the case considered on said petition, the record of the board, and the answer filed by the board. No new or additional evidence shall be taken or heard by the court. All such cases shall be given preferred settings and shall be heard by the court as speedily as possible after issue is joined.

The court has power to suspend or stay such order or action by the board complained of by the petitioner in error, but only in the event that such petitioner executes a bond payable to the board in such amount as the court deems reasonably sufficient to cover any loss or penalty occasioned by such stay or suspension of such order or action. In the event the order or ruling of the board is affirmed, execution on said bond shall be issued by the court with cost of the proceedings, including a reasonable attorney's fee for the board's counsel.

Should the court find the said ruling, order, or action of the board to be unlawful or unreasonable within the meaning of the act, it shall have the power to vacate or modify such order, ruling, or action.

Status of Cooperative Marketing Associations of Producers

Within the meaning of the act, a producers' cooperative is "a cooperative corporation, organized or operated under or subject to the provisions of Article 20, or 21, or amendments thereto, for Cooperative Marketing Associations and engaged in making collective sales or

marketing of milk for the producers thereof." Such a cooperative shall not be prevented "from blending the net proceeds of all its sales in various classes, and whether in fluid form or as manufactured products, both within and without the State, and paying its producers such blended price, with such deductions for differentials as may be authorized under contract between such corporation and its producers." It may likewise act for nonmember producers but nothing is said in the act in regard to authorized deductions in the case of nonmembers. A cooperative, thus defined, shall not be deemed to be a conspiracy or combination in restraint of trade. The act, however, specifically requires that all contracts entered into between the cooperative and any milk dealer "shall be upon the basis of the prices and handling charges fixed by the Board, with the result that the net price received for milk by the cooperative corporation shall be commensurate with such prices and handling charges." The act further provides that no milk dealer shall receive from such cooperative any discounts or compensation of any sort for the purpose or with the effect of reducing the net cost to the dealer for milk purchased by or through the cooperative.

PART TWO

I. Administrative Procedure, Rules, Regulations, and Official Orders.

Extent of board's authority in State. - For convenience, the extent of authority exercised by the board is noted with respect to milksheds designated by the board as natural marketing areas, and with respect to the persons and products affected by official orders of the board.

By August 6, 1935, the board has designated the Birmingham, Mobile, Montgomery, and Selma milksheds, by official order No. 1, the boundaries of which were set forth in the order. During August and September the Tuscaloosa, Jasper, Demopolis, and Tallasssee milksheds were designated. In each of these eight milksheds the required petition was submitted and the provisions of the act were made to apply. Two other milk sheds, Anniston and Wetumpka, have been designated but no further regulatory measures have been undertaken.

In these areas all persons required to be licensed have been brought under the jurisdiction of the board. The products covered by official orders, issued with respect to resale prices, are sweet milk, cream for fluid consumption, buttermilk, whole buttermilk, chocolate milk, and other flavored milk. In several milksheds resale price schedules do not include whole buttermilk and flavored milk.

Trade practices. - Without exception orders applicable to the eight milksheds listed above prohibit certain practices or devices.

These provisions, however, repeat or clarify the prohibitions contained in the act or the specified conditions under which licenses may be refused or revoked. An example of a specific provision by the board is its prohibition of the use of any method or device whereby milk is bought or sold at a price less than the price fixed by the board, whether by discount, rebate, combination sale, advertising allowance or free service.^{3/}

Records, reports, and hearings. - An adequate system of accounting and records reflecting the true condition of their business is required of dealers in six of the eight milksheds designated by the board. In only three of these six milksheds (Birmingham, Mobile, and Montgomery) is the distributor required to make monthly reports under oath relative to class usage and prices paid producers.

Hearings are required to be held prior to the issuance of an order or an amendment thereto, the procedure following that customarily applied in such administrative action in accordance with constitutional requirements of due process.

Quotas of producers; producer-distributors. - In the Birmingham and Montgomery milksheds producer quotas have been established. In the Montgomery milkshed, for example, quotas of Class I milk are established "on the basis of the percentage of milk which each producer's average monthly sales for the first six months of 1935 bears to the total average monthly purchases of all milk bought by distributors during said period, and any future increase or decrease in Class I Milk bought or handled by distributor for any month shall increase or decrease producer's quota of Class I Milk in the same ratio which the producer's original quota bore to the original average monthly quantity of all milk purchased by such distributor for said original period." For example, if producer Jones sold to distributor Smith an average of 3,000 pounds monthly during said period and Smith bought an average of 30,000 pounds of all classes of milk per month for said period, then Jones' quota would be fixed at 10 percent of all Class I milk bought by Smith in any future month. With respect to producer-distributors, in the same milkshed, whose intention it was to cease their retailing operations and sell milk through the plants of distributors, bases might be established not to exceed the amount of new business brought to the distributor by reason of such change.

3/ Official Orders Nos. 44, 45, 46, and 47 are directed against individual distributors of milk or fluid milk products for giving wholesale customers ice in block form in quantities sufficient to constitute, in the board's judgment, a violation of the law and the orders of the board with respect to "free service." The distributors cited are ordered to desist from this practice, the penalty for further violation being revocation of license.

Advisory committees. - In six of the eight milksheds orders provide that a committee of producers, producer-distributors, and distributors may be appointed by the chairman of the board to serve without compensation in an advisory capacity.

PART THREE

Legal Status

Administrative enforcement. - Five orders and decrees were issued by the board on April 9, 1936, to the effect that the license of each of the respective violators be conditioned upon the faithful compliance with provisions of orders and the law. In addition the board instructed its attorney to file a bill of complaint in the Circuit Court of Jefferson County, Alabama, in the name of the State, against each offender, petitioning the court for permanent injunctions to prevent the sale of milk below the minimum prices fixed by the board.

Litigation. - The principal case involving the constitutionality of the act was that of H. G. Franklin vs. State of Alabama before the Supreme Court of Alabama, in the October term 1935-36, in which compliance with fixed minimum resale prices was an issue.

The court accepted the legislative declaration of an emergency as *prima facie* true and noted the absence of facts which would lead to a contrary judicial opinion. The principal question in the mind of the court appears to be whether the law has a reasonable exercise of State police power. Its opinion reflected the view of the Supreme Court of the United States in the *Nebbia* case,^{4/} and held that the act did not violate the Fifth and Fourteenth Amendments of the Federal Constitution, nor the similar provisions of the State Constitution. The court cited in support of the law the similarity between the Alabama Act and the New York milk law and the decisions of the highest State courts, respectively, of New Jersey, Virginia, and Indiana, in which similar legislation in these States was upheld.^{5/}

^{4/} *Nebbia v. New York*, 291 U. S. 506, 78 L. ed. 940.

^{5/} *State v. Newark Milk Company*, 179 Atl. (N.J.) 116; *Reynolds v. Milk Commission*, 179 S. E. (Va.) 507; *Albert v. Milk Control Board*, 200 N. E. (Ind.) 688. (To this list may be added the more recent decision of the highest court of Pennsylvania upholding the milk control law of that State.)

